

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B03

PLR-125064-06

Date: September 13, 2006

Legend:

Fund =

Accounting Firm =

X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Dear :

This responds to a letter dated May 1, 2006, submitted on behalf of Fund. Fund requests that its election under § 855 of the Internal Revenue Code to treat dividends distributed after the close of a tax year as having been paid during that tax year be considered timely filed pursuant to § 301.9100-3 of the Procedure and Administration Regulations.

FACTS:

Fund represents that it intended to elect under § 855(a) to treat \$ x of the ordinary dividend paid during its tax year that ended on Date 1 as having been paid during the tax year that ended on Date 2, but it inadvertently failed to timely file a tax return. As had been the case in prior years, Accounting Firm prepared Fund's tax returns and tax extensions for the tax year that ended on Date 2. On Date 3, a tax senior manager in Accounting Firm reviewed and mailed a request for a tax extension to Fund's assistant treasurer. On Date 4, Fund's assistant treasurer signed it and mailed it timely to the Internal Revenue Service. This extended the due date of the Fund's tax return to Date 5. Accounting Firm staff prepared the Fund's tax return and gave it to the tax senior manager on Date 6 for review. The tax return was inadvertently placed in a file drawer where completed returns were stored, prior to the tax senior manager's review. The Fund's assistant treasurer, due to his extraordinary work load in this period, failed to contact Accounting Firm to request the tax return. The tax senior manager discovered this omission on Date 7, reviewed the tax return, and mailed it to Fund. Fund filed the tax return on Date 8.

Fund makes the following additional representations:

1. The request for relief was filed by Fund before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief requested will not result in Fund having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Fund would have had if the election had been timely made (taking into account the time value of money).
3. Fund did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Fund requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Fund did not choose to not file the election.

LAW AND ANALYSIS:

Section 855(a) of the Code provides that, if a RIC:

- (1) declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and
- (2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b), (c) and (d).

Section 1.855-1(b)(1) of the Income Tax Regulations sets forth the method of making the election and provides that the election must be made in the return filed by the RIC for the taxable year.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money.)

HOLDING:

Based upon the facts presented and representations made by Fund, we hold that Fund has demonstrated good cause for the granting relief under § 301.9100-3. Accordingly, Fund will be treated as having made a timely election under § 855(a) of the Code on its federal income tax return filed on Date 8 for the tax year that ended on Date 2.

No opinion is expressed as to whether Fund's tax liability is not lower in the aggregate for the year to which the election applies than Fund's tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director will determine Fund's tax liabilities for the year involved. If the director determines that Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of Fund's election under § 855(a) of the Code. This ruling does not relieve Fund from any penalty that it may owe as a result of its failure to file its federal income tax returns on time. Except as specifically ruled upon above, no opinion is expressed or implied as to any federal excise or income tax consequences regarding Fund. In particular, no opinion is expressed or implied whether Fund qualifies as a RIC that is taxable under subchapter M, part 1 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Alice M. Bennett
Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institution & Products)

Enclosures:

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